

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

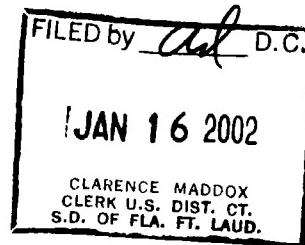
Case No. 00-6293-CR-FERGUSON

Plaintiff,

vs.

TROY BROWN,

Defendant.



ORDER DISMISSING INDICTMENT

THIS CAUSE is before the Court on Defendant's Motion to Dismiss Indictment [D.E.184].

In the motion, the Defendant contends that the government introduced improper evidence of the defendant's prior record in seeking an indictment.

As the United States Supreme Court explained, a Court may dismiss an indictment only "if it established that the violations substantially influenced the grand jury's decision to indict," or if there is "grave doubt" that the grand jury's decision to indict was free from such substantial influence. Bank of Nova Scotia v. United States, 487 U.S. 250, 251 (1988).

In seeking an indictment in this case, the government introduced evidence to the grand jury pertaining to the Defendant's prior felony drug conviction. This evidence did not relate to an element of the currently charged offense. Rather, the defendant's prior felony drug conviction was a factor to be considered at sentencing for determining whether the defendant should receive a sentence enhancement. See United States v. Harden, 37 F.3d 595, 599 (11th Cir. 1994). Considering the community climate regarding crack cocaine, the government's presentation of the

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defendant's prior felony drug conviction to the grand jury raises "grave doubt" whether their decision to indict was improperly influenced. Accordingly, having considered the motion, response and pertinent portions of the record , it is

ORDERED AND ADJUDGED that the motion [D.E.184] is **GRANTED**. The indictment against the defendant is hereby **DISMISSED WITHOUT PREJUDICE**.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Florida, this 16th day of January, 2002.



WILKIE D. FERGUSON, JR.
UNITED STATES DISTRICT JUDGE

copies provided:
Bruce O. Brown, AUSA
Louis Casuso, Esq.